IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.10.2007

Coram :

The Hon'ble Mr. Justice F.M.IBRAHIM KALIFULLA
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.12213 of 2002

The Union of India
Rep. by the Chief Personnel Officer,
Southern Railway,
Chennai - 3. ... Petitioner

vs.

1. The Registrar
Central Administrative Tribunal,
Chennai.

2. K.Venkatasamy

3. C.Saravanan ..Respondents

Writ Petition, seeking certiorari is filed by the petitioner, under Article 226 of the Constitution of India, to call for the records of the impugned order of the Central Administrative Tribunal, Chennai in O.A.No.943 of 2000, dated 31.08.2001 on the file of the Central Administrative Tribunal, Madras Bench, Chennai and quash the same.

For Petitioner : Mrs.Aparna Nandakumar

For Respondents : Mr.P.V.S.Giridharan for R2

O R D E R

S.TAMILVANAN, J

This writ petition has been filed by the petitioner, against the order dated 31.08.2001 made in O.A.No.943 of 2000, on the file of the Central Administrative Tribunal, Madras Bench, Chennai, whereby the Tribunal has held that the action of the writ petitioner in promoting the third respondent herein as CM-B is not in accordance with the prescribed

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procedure and accordingly, allowed the application and set aside the order passed by the petitioner herein. The Tribunal has further directed to consider the case of the second respondent herein for promoting him to the post of CM-B within six weeks from the date of receipt of the copy of the impugned order.

2. It is not in dispute that the second respondent herein was initially engaged as Casual Labour under the petitioner with effect from 27.02.1974 and subsequently empanelled as Temporary Stores Khalasi and posted to work under the control of District Controller of Stores / General Stores Department, Perambur and then promoted as Hand Lay Cutter and Machine Cutter Grade-II, then he was promoted as Tailor Grade I in the scale of Rs.1320-2040 with effect from 12.11.1992. The writ petitioner has stated that the cadre strength of supervisory staff of clothing factory, Perambur, attached to District Controller of Stores/GSD/PER and their scale of pay as under :

Foreman Gr.I in scale of Rs.6500-10500 : 1
Foreman Gr.II in scale of Rs.5500-9000 : 2
Chargeman "B" in scale of Rs.5000-8000 : 1

3. It is an admitted fact that a vacancy of Foreman Gr.II in the scale of Rs.5500-9000 arose and the next incumbent holding the post of Chargeman "B" was in the pay scale of Rs.5000-8000/-. One Sri.G.Ayyalu had not completed the requisite service in the lower grade to be considered for promotion to the post of Foreman Gr.II. Then it was decided by the petitioner herein to down grade the post of Foreman Gr.II in scale of Rs.5500-9000/-, as Chargeman "B" in the scale of Rs.5000-8000/- and to conduct selection test to fill up the said post, for which alert notice in respect of the selection was published on 12.04.1999. While so, Sri.G.Ayyalu, who was holding the single post of Chargeman "B" in the lower grade expired on 27.04.1999. Hence, the lower grade post of Chargeman "B" in the scale of Rs.5000-8000/- was also fell vacant and therefore, the alert notice issued by Office letter, dated 12.04.1999 was cancelled and according to the petitioner, a fresh notice was issued to fill up two vacancies, that is UR : 1 & SC : 1, as per the Post Based Roster (PBR) system, which was introduced by Railway Board's letter No.95/E(SCT)1/49/5/27, dated 21.08.1997. The petitioner has stated that the said PBR system was effected from 10.02.1995 and as per the Model roster system, the then prevailing 40 point vacancy based roster of promotion was replaced by Post Based Roster for cadre strength up to 14 posts. According to the writ petitioner, the replacing point No.(2) in the Post Based Roster, falling to the share of UR in the category of Chargeman, was taken into account. As it was temporarily down graded as Chargeman "B", the PBR of the said higher grade post (viz Foreman Grade II) was taken into account by the petitioner. Accordingly, the replacement point No.(2) as per the Post Based Roster of Foreman Gr.II has fallen to

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the share of SC vacancy and the same was also taken into account and alert notice for filling up two posts of Chargeman "B" in the scale of Rs.5000-8000/- with communal break up of UR:1 and SC : 1 was published, by way of alert notice, dated 06.05.1999.

4. It is not disputed that as per the alert notice, the following employees were alerted to be in readiness to appear for the selection of the next higher post of Chargeman "B".

1. Sri.S.A.Jaleel, Pattern Maker Grade-I/CF/PER
2. Sri.K.Venkataswamy, Tailor Grade-I/CF/PER
3. Sri.G.Srinivasan, Tailor Grade-I/CF/PER
4. Sri.C.Saravanan (SC),SHLC/CF/PER.

5. It is further stated by the petitioner that by adopting the Post Based Roster system, Sri.S.A.Jaleel, the senior most employee in the UR category and Sri.C.Saravanan, who was the only SC employee in the feeder category of HS Skilled Grade - I were empanelled and as per the Office Order No.51/99, dated 03.08.1999, Sri.S.A.Jaleel and Sri.C.Saravanan, the third respondent herein were promoted. Aggrieved by which, Sri.K.Venkatesan, the second respondent herein filed O.A.No.943 of 2000 before the Central Administrative Tribunal, Madras Bench, Chennai, seeking a direction to the petitioner to promote the second respondent as Chargeman "B" and the same was allowed by the Tribunal.

6. The Tribunal, after considering the down gradation of Foreman Gr.II to that of Chargeman "B" and also the model roster for promotion, applicable to the cadre strength up to 14 posts, as per the DOPT, by its letter, dated 21.08.1997, held that the existing vacancy and the downgraded vacancy of Chargeman "B" are only UR vacancy and accordingly, allowed the Original Application with the direction to the petitioner herein to consider the case of the second respondent for promotion to the post of Chargeman "B". The aforesaid model roster for promotion for cadre strength upto 14 posts, otherwise known as "L" shaped model roster is not under challenge before us. As per the model roster, for a cadre strength of two vacancies, the initial appointment shall be of UR and the first replacement would also be from the feeder category of UR and only the second turn of replacement is for SC vacancy. By downgrading the post of Foreman Gr.II to that of Chargeman "B" for the first time, it has been necessitated to fill up the said vacancy and the petitioner department is expected to follow the guidelines given by the Railway Board. With reference to the two vacancies of Chargeman "B" to be filled up. In the impugned order, the Tribunal has held as follows :

> "Thus it emerges from the above that in so far as promotion to the one post of CM-B is concerned, this has to be filled up by a person belonging to the unreserved category, because this being a solitary post, no reservation roster is applicable. In so far as the downgraded post of FM-II to that of CM-B is

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concerned, the post being the first replacement slot of FM-II category will have to be in the same category to which the cycle is applicable as if it belongs to the higher category viewed in this context, the down graded post of FM-II to that of CM-B ought to have been filled up by a candidate belonging to the unreserved category. Therefore, the action of the department in filling up one of these two posts with a reserved category candidate is not in accordance with the rules and procedure prescribed on the subject."

7. With the above finding, the Tribunal held that the action of the petitioner in promoting the third respondent herein, as CM-B is not in accordance with the prescribed procedure and on that ground, the Original Application filed by the second respondent was allowed and the petitioner herein was directed to consider the case of the applicant for the promotion to the post of CM-B within the time stipulated therein.

8. Mrs.Aparna Nandakumar, learned counsel appearing for the writ petitioner would contend that since the post of Foreman Gr.II in the scale of Rs.5500-9000/- having been downgraded to that of Chargemen "B", in the scale of Rs.5000-8000/-, the Post Based Roster of the higher post was taken into account and hence, SC shortfall arose as per the Post Based Roster and accordingly, the alert notice was issued by the petitioner herein to fill up the vacancy. The learned counsel further contended that as per the instructions of the Railway Board's Letter dated 29.06.1999, one post of UR and one post of SC had to be filled up and hence, the second respondent herein could not be selected, since 3 UR candidates and one SC candidate alone were called for the selection, in view of the Post Based Roster. On the side of the petitioner, it was contended that it was only a second replacement, on account of the post of Foreman Gr.II having been downgraded and as such the promotion of the third respondent herein is in accordance with the service rules.

9. It is clear from the arguments advanced by both the learned counsel that the issue involved in the writ petition is mainly based on the question whether the aforesaid replacement as per the model rostr was the first or second replacement, on account of the down gradation of the post of Foreman Gr.II by the petitioner.

10. It is not in dispute that Sri.G.Ayyalu was holding the post of Chargeman "B" (CM - "B") and he expired on 27.04.1999, which necessitated to fill up the post and as there was no eligible employee to be promoted as Foreman Gr.II, one post of the same was downgraded to that of Chargeman "B". On account of the down gradation of the post Foreman Gr.II to that of Chargeman "B", considering the two vacancies, it became necessary to fill up the post as per the roster point principle of reservation. It is not in dispute that the previous 40 point vacancy based roster system of promotion was replaced by Post Based Roster system / L shaped model roster with effect from 10.12.1995 as per the orders of the Railway Board.

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11. According to the petitioner, as per the Post Based Roster system of reservation, even in case of limited number of vacancies, all the posts shall be earmarked only on the same pattern. As per the Annexure – III, Letter No. No.95/E(SCT)1/49/5/27, dated 21.08.1997, the initial promotion against those posts shall be the category for which the post is earmarked and the replacement of the incumbents of the post shall be by rotation as shown horizontally against the cadre, as per the "L" shaped roster formula being followed.

12. It has been stated in the reply statement filed by the petitioner herein, before the Tribunal in the original application, that for the sanctioned strength of one post of Chargeman "B", the incumbents available as on 10.02.1995, on the date of implementation of Post Based Roster was Sri. M.Pachiappan and the first replacement was falling to the share of UR and the same was actually filled up by Sri.G.Ayyalu, for which the panel was published on 19.08.1998. The replacement point number 2 in the Post Based Roster (PBR) fell to the share of UR in the category of Chargeman "B" as per L shaped model roster, was taken into account and in respect of the post of Foreman Gr.II in the scale of Rs.5500-9000/-, having been down graded as Chargeman "B" was taken into account and accordingly, the replacement point number 2 in the Post Based Roster fell into share of SC has also been taken note of and accordingly, alert notice for filling up 2 posts of Chargeman "B" in the scale of Rs.5000-8000/- with communal break up of UR : 1 and SC : 1 was published vide alert notice, dated 06.05.1999.

13. According to the writ petitioner, Sri.S.A.Jaleel, being the senior most employee in the feeder category as Pattern Maker Gr.I was selected and appointed, since he was admittedly senior to other employees in the feeder category. As the third respondent herein was the only SC employee in the feeder category as RS Skilled Gr.I, he was selected as against SC shortfall vacancy and therefore, there is no error in the order passed by the petitioner herein. Hence, it has to be decided whether the two posts of Chargeman "B" has to be filled up with communal break up of UR : 1 and SC : 1, as published in the alert notice given by the petitioner to the qualified employees in the feeder category or both the vacancies were to be treated for UR candidates, one as initial appointment and another for first replacement, is the main issue before us.

14. Mrs. Aparna Nandakumar, learned counsel appearing for the petitioner would contend that as per model roster, promotion for cadre strength up to 14 posts, considering Foreman Gr.II having been downgraded, the writ petitioner has properly decided that out of the two vacancies in Chargeman "B", one post is for UR category and the other one is for SC vacancy.

15. Per contra, Mr.P.V.S.Giridharan, learned counsel appearing for the second respondent would contend that as per the model roster, initial appointment and the first turn should be filled up by UR candidates and

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only the second turn has to be filled up as SC vacancy and therefore, the impugned order passed by the Tribunal warrants no interference by this Court. In support of his contention, the learned counsel for the second respondent relied on the following decision :

1. 1998 (4) SCC, Post Graduate Institute of Medical Education and Research vs Faculty Association.
2. 1997 (11) SCC 220, D.M.Shende vs. State of Maharashtra
3. 1982 (2) SCC 51, Dina Nath vs. Himachal Pradesh Housing Board.

16. In the decision Post Graduate Institute of Medical Education and Research vs Faculty Association, reported in 1998 (4) SCC, the Constitution Bench of the Hon'ble Supreme Court has held as follows :

> " In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent percent reservation for the backward classes is not permissible within the constitutional framework. The decisions of this Court to this effect over the decades have been consistent."

In the above referred case, the Hon'ble Apex Court has held that in a single cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. As per this decision, it is clear that until there is plurality of posts in a cadre, the question of reservation will not arise.

17. Earlier, the post of Chargeman "B" was a single post cadre, but after Foreman Gr.II having been downgraded, it cannot be said the same as single post cadre and therefore, the Post Based Roster system is applicable for promoting the eligible employees to Chargeman "B" from the feeder category.

18. In D.M.Shende vs. State of Maharashtra, reported in 1997 (11) SCC 220, the decision of the Bombay High Court has been upheld by the Hon'ble Apex Court with regard to downgrading of the post of Agricultural Officers as thus, "The High Court has rightly held that the appellants cannot make a grievance regarding the said downgrading of the post of Agricultural Officers."

19. Here in the instance case, the post of Foreman Gr.II was admittedly downgraded, as there was no suitable employee available to be promoted to the cadre, which is not under challenge in this writ petition.

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20. In the decision Dina Nath vs. Himachal Pradesh Housing Board, reported in 1982 (2) SCC 51, the Full Bench of the Hon'ble Apex Court has held that down gradation of post, after abolition of higher post held by the applicant therein while willing to accept lower post on lower scale of pay, the Department once having appointed the appellant therein knowing his qualifications, cannot deprive him of the lower post, after the down gradation on the ground of non-suitability.

21. In the instance case, on account of down gradation of the post of Foreman Gr.II, no one appointed to the post has been reverted to any lower cadre and hence, the decisions referred to above is not directly applicable to the facts and circumstances of the case on hand. In the instant case, only for the down graded post of Chargeman "B", along with the already existing vacancy, the petitioner herein had to promote employees from the feeder category, as per the relevant service rules.

22. The relevant "L" shaped roster being followed as per the order of the Railway Board is as follows :

Cadre Strength	Initial App.	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th	13th	14th
1.	UR	UR	UR	SC	UR	UR	UR	ST	UR	UR	UR	SC	UR	UR	UR
2.	UR	UR	SC	UR	UR	UR	ST	UR	UR	UR	SC	UR	UR	UR	
3.	UR	SC	UR	UR	UR	ST	UR	UR	UR	SC	UR	UR	UR		
4.	SC	UR	UR	UR	ST	UR	UR	UR	SC	UR	UR	UR			
5.	UR	UR	UR	ST	UR	UR	UR	SC	UR	UR	UR				
6.	UR	UR	ST	UR	UR	UR	SC	UR	UR	UR					
7.	UR	ST	UR	UR	UR	SC	UR	UR	UR						
8.	ST	UR	UR	UR	SC	UR	UR	UR							
9.	UR	UR	UR	SC	UR	UR	UR								
10.	UR	UR	SC	UR	UR	UR									
11.	UR	SC	UR	UR	UR										
12.	SC	UR	UR	UR											
13.	UR	UR	UR												
14.	UR	UR													

23. The Central Administrative Tribunal in the impugned order has held that the aforesaid 2 vacancies should be treated only under UR and as such the second turn has to be treated as SC vacancy. As Foreman Gr.II was admittedly downgraded as Chargeman "B", on the ground of no suitable candidate to fill up the said vacancy, there are two vacancies of Chargeman "B" in the said category and therefore, as per the Letter No.95/E(SCT)1/49/5/27, dated 21.08.1997 of Railway Board, the model roster for promotion for the strength up to 14 posts has to be applied. As per model roster procedure, for the cadre strength of two vacancies, the

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initial appointment is UR and the first turn is also UR and only the second turn would be SC vacancy. After the post of Foreman Gr.II having been downgraded, the cadre strength came to two in number, hence, the initial appointment and first turn have to be filled up by UR category employees and therefore, only the next turn should be considered for SC vacancy. Therefore, on the facts and circumstances and also considering the 14 point model roster, we are of the view that the initial appointment and first turn should be filled up only by UR candidates, since the cadre strength is two and only the next turn i.e., second turn would be for SC vacancy and therefore, we are unable to accept the contention raised by the learned counsel appearing for the petitioner that it should be considered as first and second turn for the purpose of promotion as per the model roster.

24. It is not in dispute that as per the seniority list in the feeder category, Sri.S.A.Jaleel was the senior most employee, who was promoted and the next senior most employee in the feeder category is the second respondent herein and hence, the third respondent could be considered for promotion only for the next SC vacancy, as per the model roster and therefore, we could find no error or infirmity in the impugned order passed by the Central Administrative Tribunal, which would warrant the interference of this Court under Article 226 of the Constitution. Accordingly, the writ petition fails.

25. In the result, this writ petition is dismissed. No order as to costs.

tsvn

Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1.The Registrar
Central Administrative Tribunal,
Chennai.
+ One cc to M/s Aparna Nanda Kumar Advocate sR 62220
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Order in W.P.No.12213 of 2002
06.10.2007

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